

1

## 2

3

4

5

6

/

)  
)  
)  
)  
)  
)  
)

) )

) ) )

## 9

10

5

19

23

## II. FINDINGS OF FACT

2.1 Appellant Daniel C. Kannegaard Jr. was a Food Service Worker Lead in the Compton Union Building (CUB) and permanent employee for Respondent Washington State University. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 18, 2001.

2.2 By letter dated March 28, 2001, Tim McCarty, Director of the Compton Union Building, informed Appellant that he was permanently demoted from Food Service Worker Lead position to a Food Service Worker, effective April 19, 2001. Mr. McCarty charged Appellant with neglect of duty and insubordination. Mr. McCarty alleged that Appellant refused to follow the instructions of his supervisor to clean the walls of his work area.

2.3 Appellant began his employment with Washington State University as a Food Service Worker Lead in June 1995. Appellant was responsible for the dish room, and he directed the work of others, including several student worker. Appellant had history of informal and formal disciplinary actions.

2.4 On March 7, 2000, Eric Webb, Appellant's second-line supervisor, met with Appellant and his supervisor, Chris Kenney, regarding Appellant's refusal to clean the walls in the dishwashing area during the prior holiday break. During the meeting, Appellant expressed his belief that cleaning the walls was janitorial work. However, management made Appellant aware that ensuring that the walls were cleaned was his responsibility.

2.5 Eric Webb credibly testified that during an April 7, 2000, meeting with Yves LaTouche, Appellant's former supervisor, Appellant was given a letter of reprimand for refusing to follow a

1 supervisory directive. Appellant was informed that he was insubordinate and warned that further  
2 incidents of insubordination could result in formal discipline, including dismissal. The letter was  
3 maintained in Appellant's departmental personnel file until October 4, 2000, when it was provided  
4 to WSU's Human Resources Office.

5  
6 2.6 On October 11, 2000 the Washington Federation of State Employees and WSU approved a  
7 Contract Rollover Proposal for Bargaining Unit 2 that modified the language of the regular contract.  
8 Article 11.11 of the proposal states in part, "[t]here shall be only one official personnel file for each  
9 employee which shall consist of the files maintained in human resource services, the employee's  
10 home department . . . and those files maintained in medical records and files maintained in benefit  
11 services."

12  
13 2.7 In light of the October 11, 2000 proposal, we find that the letter of reprimand was part of  
14 Appellant's personnel record.

15  
16 2.8 On October 20, 2000, Appellant received a three-day suspension for unprofessional,  
17 inappropriate and unwarranted conduct toward two subordinates.

18  
19 2.9 The incident that resulted in the disciplinary action at issue in this appeal occurred during  
20 the December 2000 - January 2001 holiday break.

21  
22 2.10 During holiday breaks, WSU's dining services perform deep cleaning of the food service  
23 areas. On December 20, 2000, Chris Kenney, posted a list of cleaning tasks on the wall of the  
24 dishwashing area. Appellant and two student workers were to complete the tasks before mid-  
25 January when the students returned from break. The list did not indicate who was expected to  
26 complete which task. Appellant saw the list on December 22, 2000. Appellant was on approved

1 leave from December 23, 2000, until January 2, 2001. While Appellant was on leave, the two  
2 students worked on completing the list of tasks.

3  
4 2.11 When Appellant returned to work on January 2, he was directed to attend a meeting that  
5 afternoon. During the meeting, Appellant told Mr. Kenney that he had not cleaned the walls and  
6 expressed his concern that cleaning the walls was not his job, but was janitorial work. Appellant  
7 indicated that if he was expected to do janitorial work, he should be paid janitorial wages in  
8 addition to his regular salary. Mr. Kenney perceived Appellant's comments to mean that Appellant  
9 was refusing to clean the walls.

10  
11 2.12 Deep cleaning the walls is a big job and requires equipment to be pulled away from the  
12 walls. Mr. Kenney and Mr. Webb both have offices in the vicinity of the dish room. If the students  
13 had deep cleaned the walls, Mr. Kenney and/or Mr. Webb would have observed them doing this  
14 task. However, when Mr. Kenney and Mr. Webb checked the walls, they did not believe the walls  
15 had been cleaned or that if they had, that they were not cleaned properly. Neither Mr. Kenney nor  
16 Mr. Webb talked to the students about whether the walls had been deep cleaned.

17  
18 2.13 Mr. Webb brought the issue to Tim McCarty. Mr. McCarty issued two pre-disciplinary  
19 notices and held two pre-disciplinary meetings with Appellant, his representatives, and  
20 representatives of management. During these meetings, Appellant did not say that he had cleaned  
21 the walls. Rather, Appellant continued to assert his belief that cleaning the walls was not his job.

22  
23 2.14 Mr. McCarty considered Appellant's disciplinary history and considered the information he  
24 received concerning what he believed was Appellant's refusal to clean the walls. He found that  
25 Appellant failed to demonstrate a good example for the student workers, refused to perform the  
26 duties of his position, willfully challenged the authority of his supervisors and tested the authority

1 of the organization. Mr. McCarty determined that deep cleaning the walls was typically  
2 accomplished by dining services staff during the break periods and it was an appropriate task for  
3 Appellant and his crew to be assigned this task for the dishwashing area. Mr. McCarty concluded  
4 that Appellant neglected his duty and was insubordinate when he refused to perform the duties and  
5 responsibilities of his position. In light of Appellant's history of corrective and disciplinary actions,  
6 Mr. McCarty determined that Appellant should be demoted to a position with no responsibility over  
7 student employees and that encompassed the duties and responsibilities Appellant seemed to be  
8 willing to perform. Therefore, he demoted Appellant to a Food Service Worker position.

### 10 **III. ARGUMENTS OF THE PARTIES**

11 3.1 Respondent argues that the walls were never cleaned, that Appellant was aware of his  
12 responsibility to ensure that the walls were cleaned but that he refused to accept this responsibility.  
13 Respondent contends that Appellant failed to act appropriately, to carry out the responsibilities of  
14 his position, and to comply with the directions of his supervisor. Respondent argues that  
15 Appellant's behavior was insubordinate and inappropriate for someone in a lead position, that his  
16 actions were willful, and that given the nature of his misconduct and disciplinary history, he was no  
17 longer qualified to hold a lead position. Respondent argues that demotion to a non-lead position  
18 was appropriate and should be affirmed.

19  
20 3.2 Appellant acknowledges that he expressed his opinion that cleaning the walls was janitorial  
21 work, but contends that he never refused to clean the walls. Appellant suggests that this task is  
22 beyond the scope of his job classification. Furthermore, Appellant contends that the students  
23 cleaned the walls. Appellant contends that Mr. Webb and Mr. Kenney looked at the walls before  
24 the students cleaned them and then, because Appellant had expressed his concern about doing  
25 someone else's duties, they assumed that the task would not be completed. Appellant contends that  
26 Respondent failed to meet its burden of proof and that the demotion should be reversed.

#### IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

4.5 Respondent has proven by a preponderance of the credible evidence that Appellant neglected his duty to ensure that the walls were deep cleaned. Respondent has also proven that Appellant was insubordinate when he failed to comply with the supervisory directive to deep clean the walls. As a Food Service Worker Lead, Appellant was responsible for the cleanliness of his work area, including the walls. Periodic deep cleaning of the walls was not outside of the scope of duties typically assigned to Appellant's position. Furthermore, deep cleaning the walls was consistent with the duties outlined in Appellant's job classification.

1 4.6 The appeal of Daniel Kannegaard should be denied.

2  
3 **V. ORDER**

4 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Daniel Kannegaard Jr. is  
5 denied.

6 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

7 **WASHINGTON STATE PERSONNEL APPEALS BOARD**

8  
9 \_\_\_\_\_  
10 Walter T. Hubbard, Chair

11 \_\_\_\_\_  
12 René Ewing, Member

13 **DISSENT**

14 I must respectfully disagree with the opinion and decision of the majority of the Board in this  
15 matter.

16  
17 The disciplinary letter dated March 28, 2001 outlines the specific allegations against Appellant. In  
18 paragraph three of the disciplinary letter, the charge is clearly identified as:

19 Specifically, you are being disciplined for refusing to follow the instructions of your  
20 supervisor, Chris Kenney. On December 20, 2000, he provided you with a work  
assignment list that included cleaning of the walls in your work area.

21 It is important to note that the work assignment list was posted in the work area for not only  
22 Appellant, but for the two student workers. Upon Appellant's departure for annual leave on  
23 December 22, 2000, the two student workers remained and continued to complete the tasks on the  
24 list. Upon Appellant's return to work on January 2, 2001, he reviewed the list and the task of  
25 cleaning the walls had been checked off as completed. On the afternoon of his return, Appellant  
26

1 was confronted with the issue of cleaning of the walls. It is important to point out that neither Mr.  
2 Kenney nor Mr. Webb reviewed the list nor checked with either one of the students to determine if  
3 the walls had been cleaned prior to accusing Appellant of failing to clean the walls.

4 There was no credible testimony from any of Respondent's witnesses that Appellant ever refused to  
5 perform the task of cleaning the walls. Appellant objected to the assignment of the work, because  
6 he believed that the assignment was outside the scope of his job classification. Appellant raised that  
7 objection with both of his supervisors, Chris Kenney and Eric Webb. The raising of an objection to  
8 a specific work assignment is an employee's right and is not, in and of itself, the basis for a charge  
9 of insubordination. It was extremely clear from the exhibits that both Mr. Kenney and Mr. Webb  
10 felt that they had directed Appellant, and only Appellant, to clean the walls. It is interesting to note  
11 that by the time this case came to a hearing, both Mr. Kenney and Mr. Webb had altered their  
12 recollection of the directions to only ensuring that the walls were cleaned somehow by someone.

13  
14 Michael Bickford, one of the student employees, credibly testified that the work list had been  
15 posted by Mr. Kenney and that all of the employees had been instructed to perform the work on the  
16 list. While Appellant was on leave both Mr. Bickford and the other student completed tasks on the  
17 list and as they completed each task, they checked it off the list. Mr. Bickford credibly testified that  
18 he cleaned the walls and subsequently checked the task off the list as completed.

19  
20 It is important to now look at the charges and the testimony presented by Respondent to substantiate  
21 those charges. The appointing authority and both supervisors testified that their concern was not  
22 who cleaned the walls but that the walls were cleaned. Both Mr. Kenney and Mr. Webb testified  
23 that the walls were not cleaned by Appellant or by either of the two students. Both Appellant and  
24 Michael Bickford contradict this testimony. The only document that could have substantiated either  
25 piece of testimony, the work list and checked off items, was conveniently discarded or misplaced  
26



1 and was not presented as an exhibit by either party. So, in order to determine whether or not the  
2 walls were cleaned, one must determine the credibility of witnesses.

3 Michael Bickford had no reason or motive to testify untruthfully before the Board. He was a  
4 student and was dependent upon his job as a food service worker in the Compton Union Building.  
5 In fact, Mr. Bickford, as a temporary employee with no civil service protection or rights, may have  
6 placed his employment in jeopardy by testifying on behalf of Appellant in this matter.  
7

8 As outlined in the disciplinary letter and established by the testimony before the Board, the sole  
9 issue before the Board was whether or not the walls were cleaned during the winter break of 2000.  
10 Whether or not Appellant personally cleaned the walls is not the issue. Whether or not the walls  
11 were cleaned satisfactorily is not the issue. Whether or not Appellant challenged the assignment of  
12 the cleaning of the walls is not the issue. Based on the totality of the evidence and credible  
13 testimony, I believe that the students in fact cleaned the walls during the winter break of 2000.  
14 Therefore the disciplinary sanction of demotion should fail.  
15

16 \_\_\_\_\_  
Gerald L. Morgen, Vice Chair  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26